BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

PAUL M. ROBINSON	)	
Claimant	)	
V.	)	
	)	
GOFF MOTORS/GEORGE-NIELSON	)	
MOTOR CO.	)	Docket No. 1,063,653
Respondent	)	
AND	)	
	)	
KANSAS AUTOMOBILE DEALER	)	
WORK COMP FUND	)	
Insurance Carrier	)	

ORDER

Claimant, by and through Mitchell Rice, of Hutchinson, requested review of Administrative Law Judge Pamela Fuller's August 22, 2014 Award. Brandon A. Lawson, of Kansas City, Missouri, represents respondent and insurance carrier (respondent). The parties agreed to waive oral argument.

RECORD AND STIPULATIONS

The Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

The judge found claimant voluntarily participated in the incident of "horseplay" which resulted in his knee injury. Claimant's benefits were denied pursuant to K.S.A. 2012 Supp. 44-501(a)(1)(E).

Claimant requests the Award be reversed. Claimant relies on his March 11, 2013 brief to Judge Fuller. Claimant argues his accident arose out of and in the course of his employment. Claimant argues any horseplay in which he may have participated had ended by the time he was injured at work. Claimant argues the horseplay defense does not apply because respondent knew horseplay commonly occurred at work and allowed it to continue. Respondent maintains the Award should be affirmed.

The only issue before the Board is: Does K.S.A. 2012 Supp. 44-501(a)(1)(E) preclude claimant from being awarded any compensation?

FINDINGS OF FACT

The Board incorporates by reference the facts as set forth in its April 24, 2013 Order, in which a single Board Member affirmed the judge's denial of benefits because claimant's injury was the result of voluntary horseplay.

No additional testimony was presented. At the regular hearing, a September 12, 2013 report from C. Reiff Brown, M.D., a physician who evaluated claimant at his attorney's request, was admitted into evidence. Claimant told Dr. Brown he injured his right knee when he misstepped going down stairs, a mechanism of injury different than previously alleged.

Dr. Brown assigned a 10% functional impairment to the right lower extremity. Dr. Brown opined there was a causal connection between claimant's work conditions and the accident, and the accident was the prevailing factor in causing claimant's condition and impairment.

In the August 22, 2014 Award, the judge concluded:

> It is clear that the claimant's injury was "in the course of employment" as that phrase relates to the time, place and circumstances under which the accident occurred and means the injury happened while the worker was at work. The claimant's injury did not "arise out of employment". There is no causal connection between the conditions under which the work was required to be performed and the claimant's injury.
>
> K.S.A. 44-501(a)(1)(E) Compensation for an injury shall be disallowed if such injury to the employee results from: the employee's voluntary participation in fighting or horseplay with a co-employee for any reason, work related or otherwise.
>
> It is clear that the claimant voluntarily participated in the incident of "horseplay" which resulted in his knee injury. He was the one that initiated the contact and did not discontinue the contact when requested. Therefore, the claimant's request for benefits should be and the same is hereby denied.

Thereafter, claimant filed a timely appeal.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2012 Supp. 44-501(a)(1)(E) states:

> Compensation for an injury shall be disallowed if such injury to the employee results from the employee's voluntary participation in fighting or horseplay with a co-employee for any reason, work related or otherwise.

Bergstrom states:

> The most fundamental rule of statutory construction is that the intent of the legislature governs if that intent can be ascertained. *Winnebago Tribe of Nebraska v. Kline*, 283 Kan. 64, 77, 150 P.3d 892 (2007). The legislature is presumed to have expressed its intent through the language of the statutory scheme, and when a statute is plain and unambiguous, the court must give effect to the legislative intention as expressed in the statutory language. *Hall*, 286 Kan. at 785.
>
> When a workers compensation statute is plain and unambiguous, this court must give effect to its express language rather than determine what the law should or should not be. The court will not speculate on legislative intent and will not read the statute to add something not readily found in it. If the statutory language is clear, no need exists to resort to statutory construction. *Graham v. Dokter Trucking Group*, 284 Kan. 547, 554, 161 P.3d 695 (2007).[1]

Under the new law and prior case law, an unwilling or nonparticipating victim of horseplay receives compensation for a horseplay injury.[2] Based on the facts of this case, claimant willingly and voluntarily engaged in horseplay that resulted in his injury. Claimant and Mr. Schnitker were not involved in a fight. Because claimant voluntarily engaged in horseplay and was injured, K.S.A. 2012 Supp. 44-501(a)(1)(E) precludes an order of compensation.

Prior to May 15, 2011, Kansas did not have a statute addressing horseplay. Prior Kansas decisions, which were based on the common law and decided without the benefit of a statute concerning horseplay, generally indicate horseplay injuries are not compensable unless horseplay was a regular incident of employment of which respondent was aware and allowed to continue.[3] Claimant argues such prior decisions control. The Board disagrees. The 2011 amendments to the Kansas Worker Compensation Act contain no language echoing case law which predated the change in the law. The new law does not contain an unwritten exception that injuries occurring during employer-condoned horseplay are compensable. To so conclude, the Board would be grafting unwritten language onto the statute and failing to interpret the statute based on its plain meaning.

CONCLUSIONS

Under K.S.A. 2012 Supp. 44-501(a)(1)(E), claimant cannot receive compensation because his injury occurred as a result of voluntary horseplay.

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[1] *Bergstrom v. Spears Manufacturing Co.*, 289 Kan. 605, 607-08, 214 P.3d 676 (2009).

[2] See *Coleman v. Armour Swift-Eckrich*, 281 Kan. 381, 388, 130 P.3d 111 (2006).

[3] See *Stuart v. Kansas City*, 102 Kan. 307, 310, 171 Pac. 913, *r'hg denied* 102 Kan. 563, 171 Pac. 913 (1918).

AWARD

WHEREFORE, the Board affirms the August 22, 2014 Award.

IT IS SO ORDERED.

Dated this _____ day of December, 2014.

_____
BOARD MEMBER

_____
BOARD MEMBER

_____
BOARD MEMBER

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Honorable Pamela J. Fuller